



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

5636 Southern Boulevard  
Virginia Beach, VA 23462  
www.deq.state.va.us

Robert G. Burnley  
Director

Francis L. Daniel  
Tidewater Regional Director  
(757) 518-2000

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

#### **SPECIAL ORDER BY CONSENT**

#### **WITH**

**Rainbrook Villas, L.L.C.  
Registration No. VAR102984**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of §62.1-44.15(8a) and §62.1-44.15(8d) of the Code of Virginia, between the State Water Control Board and Rainbrook Villas, L.L.C. for the purpose of resolving certain violations of environmental law and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
7. "Permit," means the Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges of Stormwater from Construction Activities (9 VAC 25-180-70).
8. "Regulation" means the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater From Construction Activities (9 VAC 25-180-10, *et seq.*).
9. "Rainbrook" means Rainbrook Villas, L.L.C., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Rainbrook is the owner/operator of the Rainbrook Villas development (the Villas) located in York County, Virginia. The Villas is a proposed residential development with a total land area of approximately 32 acres and total disturbed area of approximately 23.5 acres.
2. Section 9 VAC 25-180-60.A.1 of the Regulation states: "...operators must submit a complete registration statement in accordance with requirements of this section at least two days prior to the commencement of construction activities (i.e., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities)."
3. Section 9 VAC 25-180-10 of the Regulation defines "operator" in part, as a person who has direct operational control over construction plans and specifications for the construction activity.
4. Section 9 VAC 25-180-10 of the Regulation indicates that the definition of "person" is as provided in the State Water Control Law.
5. The State Water Control Law at §62.1-44.3 defines "person" to include any legal entity.
6. A limited liability company is a legal entity defined by Code §13.1-1002.
7. Rainbrook is an "operator" as defined by the Permit.
8. On September 29, 2003, DEQ received a complete registration statement for coverage under the Permit from Rainbrook, for construction activities at the Villas. Rainbrook's coverage under the Permit became effective October 7, 2003. According to the registration statement, construction activity at the Villas started on September 1, 1999.
9. On August 21, 2003, DEQ issued Notice of Violation No. 03-08-TRO-002 to Rainbrook for failing to submit a registration statement prior to commencing construction activity as required by 9 VAC 25-180-60.A.1.

### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Rainbrook, and Rainbrook voluntarily agrees, to pay a civil charge of \$2,500 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall include Rainbrook's Federal Identification Number and shall note on its face that the payment is being made in accordance with the requirements of this Order. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer, Commonwealth of Virginia," delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

## **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Rainbrook, for good cause shown by Rainbrook, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Rainbrook by DEQ on August 21, 2003. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the construction site as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Rainbrook admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Rainbrook consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Rainbrook declares it has received fair and due process under the Administrative Process Act, Va. Code §§2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Rainbrook to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Rainbrook shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Rainbrook shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Rainbrook shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any

condition above, which Rainbrook intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on Rainbrook; its successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Rainbrook.
11. This Order shall continue in effect until Rainbrook petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order. In addition, the Director or the Board may terminate this Order, for good cause upon 30 days' written notice to Rainbrook. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Rainbrook from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Rainbrook voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of June 21, 2004.

Francis L. Daniel  
Francis L. Daniel, Tidewater Regional Director for  
Robert G. Burnley, Director  
Department of Environmental Quality

Rainbrook voluntarily agrees to the issuance of this Order. RAINBROOK VILLAS, L.L.C.

By: Cowles M. Spencer Sr.

Date: 4/7/04

Commonwealth of Virginia  
City/County of Grafton, VA

The foregoing document was signed and acknowledged before me this 7<sup>th</sup> day of  
April, 2004, by Cowles M. Spencer Sr., who is

Member of Rainbrook Villas, L.L.C., on behalf of the limited liability company.  
(title)

Sharon Y. West  
Notary Public

My commission expires: 2/28/07